IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 21835 of 2007(Y)

CMA.88/2007 of II ADDL. DISTRICT COURT, PALAKKAD

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PETITIONER:

POAB'S PLANTATION PVT.LTD.,
REPRESENTED BY ITS DIRECTOR, THOMAS JACOB,
WEST OTHERA, THIRUVALLA.

BY ADV. SRI.S.V.S.AYYAR (SR)
SRI.N.JAMES KOSHY
SRI.V.GIRI

RESPONDENTS:

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1. **STATE REPRESENTED BY THE DISTRICT COLLECTOR OF PALAKKAD.**

2. **CONSERVATOR OF FORESTS AND CUSTODIAN OF VESTED FOREST, OLAVAKKODE.**

BY SPL.GOVERNMENT PLEADER (FORESTS) SRI.RENJITH THAMPAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.21835/2007 Y

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE ORDER IN I.A.1008 OF 2007 IN CMA 88 OF 2007 OF THE DISTRICT JUDGE, PALAKKAD DTD. 11/07/2007.**

EXT.P2: **COPY OF THE ORDER OF THE SUB COURT IN I.A.1512 OF 2007 DTD. 29/06/2007.**

EXT.P3: **COPY OF THE PLAINT IN O.S.233 OF 2007 FILED ON 23/06/2007 BEFORE THE SUB COURT, PALAKKAD.**

EXT.P4: **COPY OF THE AFFIDAVIT AND PETITION FOR INJUNCTION FILED ALONG WITH EXHIBIT P3 SUIT NUMBERED AS IA 1512 OF 2007.**

EXT.P5: **COPY OF THE COUNTER FILED BY THE SECOND RESPONDENT TO EXHIBIT P4 DTD. 25/06/2007.**

EXT.P6: **COPY OF THE APPEAL MEMORANDUM IN CMA 88 OF 2007 FILED BEFORE DISTRICT COURT, PALAKKAD.**

EXT.P7: **COPY OF THE AFFIDAVIT IN SUPPORT OF IA.1008 OF 2007 ALONG WITH THE PETITION.**

EXT.P7(A): **COPY OF THE COUNTER FILED TO EXHIBIT P7 BY THE PETITIONER HEREIN.**

EXT.P8: **COPY OF THE LEASE DEED DTD. 30TH JUNE 1908.**

EXT.P9: **COPY OF THE ORDER OF DIVISIONAL FOREST OFFICER CONTAINING THE MEMO DTD. 30/03/1950 FROM THE SECRETARY TO GOVERNMENT, DEVELOPMENT DEPARTMENT, FOREST ETC.**

EXT.P10: **COPY OF THE NOTICE ISSUED BY THE SECOND RESPONDENT TO THE PETITIONER HEREIN DTD. 19/05/2007.**

/TRUE COPY/

P.A. TO JUDGE

KSS

M.N.KRISHNAN, J.

WP(C)No. 21835 OF 2007 Y

Dated this the 27th July, 2007.

JUDGMENT

This writ petition is filed seeking to set aside the order of the learned II Additional District Judge, Palakkad in I.A.1008/07 in C.M.A.88/07. The said C.M.A has been preferred against the order of the learned Subordinate Judge, Palakkad in I.A.1512/07 in O.S.233/07. The learned Subordinate Judge by his order dated 29.6.2007 granted an order of temporary injunction restraining the defendants from taking forcible possession of plaint A & B schedule properties without resorting to due process of law and also restrained from making any obstruction to the peaceful possession and enjoyment of the schedule property by the petitioner till the disposal of the original suit. Against the said order the government preferred the C.M.A and an interim application was filed and the learned II Additional District Judge passed an order whereby he stayed the operation of the order passed in I.A.1512/07 in O.S.233/07. Thereafter, it is submitted that the government had already taken possession of the property and it is under the management of the forest department of the Government of Kerala. When such is the situation, there is no point in deciding the question of possession as on today for the

reason that the defendants have already come into possession of the property after the passing of the order by the learned II Additional District Judge. Therefore, it is only just and proper that a direction be given to the trial court to dispose of the original suit itself after permitting the defendants to file their written statement and allowing the parties to produce documents and evidence in support of their contentions and in case of necessity by allowing the amendment of the plaint as well. The trial court shall try to dispose of the matter as expeditiously as possible, within a time frame of three months, if possible and otherwise by taking one more month's time for doing the same. At that stage the learned counsel for the writ petitioner submits that plantations are organic plantations and if artificial manures and pesticides are used it may destroy the fabric of the estate.

2. The learned Govt. Pleader made available before me an additional instruction submitted to him by the Divisional Forest Officer, Nemmara wherein the forest department has stated "in this case forest department is also applying bio-fertilizers in all the estates like Rosary, Beatrice etc. and practicing the same method as the petitioner claimed in Thuthampara estate. Moreover, the government is firm and adamant in practicing biofarming and

using bio-fertilizers in estates as these estates are adjacent to wild life concentrated areas like Parambikulam Wild Life Sanctuary, Anamala Wild Life Sanctuary etc." Therefore, even according to the defendants the normal method they adopt is only by applying the above manures etc. If it is an organic estate it is necessary to preserve the subject matter of the suit till the case is disposed of and so all concerned in all earnestness must take all the safeguards to preserve the property so that it is not destroyed. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

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